

Return Preparer Penalties

IRC 6694



Field Procedures

Field or office examination

- Examiners must determine if potential penalties are applicable including preparer penalties

Client examination process

- Examiners gather written evidence and oral testimony to make the initial return preparer penalty determination

After the audit

- Examiners will open a separate penalty investigation

Program Action Cases



Proposal, Assessment, and Appeal Procedures

- If the examiner determines a penalty applies:
 - a detailed report is prepared
 - the preparer is provided with a copy
- Preparer has 30 days to request an appeal before the penalty is assessed
- For IRC section 6700 and 6701 penalties, the penalty is assessed and the preparer must part pay and file a claim if they do not agree



Additional Actions

Circular 230 Practitioners

- IRC sections 6695(f), 6700, & 6701
- IRC sections 6694(a) & (b)
- IRC sections 7407 & 7408
- IRC section 6701(a) asserted against appraisers

Unenrolled Return Preparers

- Unenrolled return preparers' limited representation privileges may be suspended under Revenue Procedure 81-38
- Unenrolled return preparers' limited representation privileges may be revoked by Examination Area Directors

Small Business and Work Opportunity Tax Act of 2007

- Extended the application of the income tax return preparer penalties to preparers of returns for:
 - employment tax
 - estate and gift tax
 - excise tax
 - exempt organizations
- Elevated the standards of conduct that must be met by tax return preparers
- Increased penalty amounts for understatements due to unreasonable positions and willful or reckless conduct



Tax Extenders and Alternative Minimum Tax Relief Act of 2008

- Retroactively changed the general standard for preparers under section 6694(a)
 - from reasonable belief that the tax position would more likely than not be sustained on the merits
 - to substantial authority for the tax treatment of the item
- Same general standard for taxpayers under section 6662
- If the position is a tax shelter or reportable transaction under section 6662A
 - the standard remains the greater than 50% standard: it is reasonable to believe that the position would more likely than not be sustained on the merits

Published Guidance

Section 6694

- Final regulations amended regulations governing return preparer penalties
- Notice 2009-5 guidance under the preparer penalty amendments in the Tax Extenders & Alternative Minimum Tax Relief Act of 2008
- Notice 2007-54 transition relief under the Small Business and Work Opportunity Tax Act of 2007 (2007 Act)
- Notice 2008-11 clarification of transition relief under the 2007 Act
- Notice 2008-13 guidance on the new standards under the 2007 Act
- Notice 2008-46 further implementation guidance on returns subject to the 6694 penalty under the 2007 Act

Section 6695

- Rev. Proc. 2009-11 guidance for tax return preparer signature requirements



Final Regulations T.D. 9436

- Definition of tax return preparer
 - Signing tax return preparer
 - Nonsigning tax return preparer
- Definition of preparer within firm
- Reliance on information provided



Final Regulations T.D. 9436

Income Derived

- Income derived is all compensation the preparer receives or expects to receive from
 - preparing the return or claim for refund or
 - providing tax advice for the position taken on the return
- Specific rules apply when preparer is compensated directly by firm rather than by taxpayer
- Penalties assessed against the individual and the firm shall not exceed 50 percent of the income derived by the firm relating to the position



Final Regulations T.D. 9436

Reasonable Basis

- Disclosed positions on a tax return
 - must have a “reasonable basis” for the tax treatment
 - have the same reasonable basis” standard as defined in Treas. Reg. § 1.6662-3(b)(3)
- To meet the “reasonable basis” standard a tax return preparer may rely in good faith, without verification, on information furnished by a taxpayer, advisor, another preparer, or other party
- When relying on this information the preparer:
 - may not ignore the implications of information furnished to the tax return preparer or actually known by the tax return preparer, and
 - must make reasonable inquiries if the information as furnished appears to be incorrect or incomplete



Final Regulations T.D. 9436

Adequate Disclosure

Signing preparers may disclose a position by:

- Filing Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement or on the tax return
- Providing the taxpayer with a prepared tax return that includes the appropriate disclosure in accordance with § 1.6662-4(f)
- For tax returns or claims for refund that are subject to penalties other than the accuracy-related penalty for substantial understatements, advising the taxpayer of the penalty standards applicable to the taxpayer under section 6662

Separate disclosure rules for non-signing preparers

Under Notice 2009-5, special disclosure rules for tax shelters, does not apply to reportable transactions with a significant purpose of Federal tax avoidance or listed transactions



Final Regulations T.D. 9436

Reasonable Cause

Same Reasonable Cause rules apply

- Additional factor includes whether position is supported by an administrative or industry practice
- Expanded to allow a preparer to reasonably rely on information or advice furnished by a taxpayer, advisor, another preparer, or other party

